

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KAREEM BELLAMY, : **Docket#**
Plaintiff, : 12-cv-01025-AMD-PK
: .
: .
: .
- versus - : U.S. Courthouse
: .
: .
: .
CITY OF NEW YORK, et al., : Brooklyn, New York
Defendant : .
-----X
February 16, 2016

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE PEGGY KUO
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: the Honorable Magistrate Judge
2 Peggy Kuo presiding, Civil Cause for Status Conference,
3 docket number 12-cv-1025, Bellamy v. The City of New
4 York, et al.

5 Counsel, please state your names for the
6 record, starting with the plaintiff.

7 MR. HOFFMAN: Your Honor, my name is Thomas
8 Hoffman. I represent the plaintiff. With me is Jonathan
9 Hiles, who has been authorized by Judge Donnelly to
10 appear as a law intern in this case.

11 THE COURT: All right. Good morning.

12 MR. MODAFFERI: And Matthew Modafferi on behalf
13 of the City defendants.

14 Good morning, your Honor.

15 THE COURT: Good morning.

16 Okay. So I owe the parties some rulings, so
17 I'll try to see if we can go through those. The first
18 one is a ruling on the Monell depositions, right? Is
19 that still -- there's no movement on that, right?

20 MR. HOFFMAN: Right.

21 THE COURT: All right. So let me just go
22 through that. So the City is making the argument that
23 these are really (30) (b) (6) witnesses but it seems to me
24 that they are really more fact-based witnesses who have
25 specific knowledge of the practice and so, the plaintiff

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1 has also withdrawn their request to depose Judge
2 Blumenfeld.

3 The only question I have is with regard to the
4 Chief of Appeals, Judge -- John Castellano (ph.). I
5 wasn't sure where his knowledge -- what knowledge he had
6 of the discipline.

7 MR. HOFFMAN: With the Court's permission,
8 we've agreed that Mr. Hiles can address individual
9 depositions this Court may have concerns about.

10 THE COURT: All right.

11 MR. HILES: Thank you, your Honor.

12 So actually, ADA Castellano was deposed in the
13 Sui (ph.) case which we mentioned in our papers and his
14 deposition testimony, although many questions remain was
15 by a significant amount in that case, the most
16 informative. He communicated both through e-mails and
17 verbally with Jack Ryan, the chief assistant, with
18 Richard Brown, about cases of prosecutorial misconduct
19 that became apparent when the appeals bureau ADA, was
20 reviewing the record or when the appellate division said
21 this is really unacceptable in oral argument. John
22 Castellano would deal with that.

23 Additionally, he testified one of the main
24 areas we need to go deeper into that was just sort of
25 grazed over in Sui was that he received calls from the

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1 appellate division which was concerned about repeated
2 instances of prosecutorial misconduct of prosecutorial
3 misconduct and wanted to know what was being done about
4 it. He didn't field all of those calls. Some of them
5 went, I believe, to Mr. Brown and Mr. Ryan, although
6 we'll have to confirm that but that's also a very
7 important area for us.

8 (Pause)

9 MR. HILES: Oh, and I guess the last thing I'd
10 say is that there's reversal memos. We haven't received
11 those. That's one of our issues that are alluded to in
12 the Sui depositions in the late 1990s that were prepared
13 by the appeals bureau ADA and they were circulated with
14 Mr. Castellano, Mr. Ryan, Mr. Brown and then Castellano
15 would talk to Brown and Ryan about what he thought about
16 it. Was this really intentional misconduct or was this
17 just an unfortunate thing and we'll retry the case.

18 THE COURT: All right. So ADA Castellano was
19 not involved in the specific -- in Bellamy's case?

20 MR. HILES: And I apologize because he was. He
21 was. He appears on a couple of the Court papers. The
22 lead appeals bureau ADAs were Sharon Bratt (ph.) and Ron
23 Hana Diplany (ph.). So I don't know if Mr. Castellano's
24 name appears because he signed off or was more intimately
25 involved in the actual editing process. From Ms. Sui's

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1 deposition, I think he would at least read it before it
2 was filed.

3 And we know that this case, the Bellamy case,
4 was a big deal at the Queens DA from top to bottom and so
5 we also would assume he was -- he was not the most
6 involved by any means but he was somewhat involved.

7 THE COURT: Okay. And then I also had a
8 question about Ms. Kugler (ph.), the FOIL officer.

9 MR. HILES: Would you like --

10 THE COURT: No. Yeah. Let me just hear what
11 relevance her testimony would have --

12 MR. HILES: Sure.

13 THE COURT: -- would have.

14 MR. HILES: So it always seemed like there was
15 something very fishy with the testimony of this witness,
16 Linda Sanchez and so when Mr. Hoffman and Cravath Swaine
17 Moore took Mr. Bellamy's case, they -- one of the first
18 things they did was they made a FOIL request and after
19 over a year, the Queens DA record access officer Rona
20 Kugler wrote back that there were no files. I quote it
21 here, "The review of our records reveals that the
22 following documents are not disclosable...records of
23 payments on payments on behalf of Linda Sanchez, records
24 of relocation assistance for Linda Sanchez."

25 The implication was that such documents didn't

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1 even exist and it was only by coincidence at the 440
2 towards the end of it that it became clear that that was
3 not true.

4 Now I believe that she didn't intentionally do
5 that but what was the process where they were making
6 these representations and in the Betty (ph.) case, a
7 different records access officer also made a
8 representation repeatedly that there were not files
9 pertaining to witness benefits and it turns out there was
10 this file. So this was important in our case and it also
11 suggestive of a pretty egregiously unconstitutional
12 policy.

13 THE COURT: All right. So did you want to be
14 heard on those two?

15 MR. MODAFFERI: Yes, I did, your Honor.

16 THE COURT: Okay.

17 MR. MODAFFERI: I think basically my motion for
18 a protective order can be broken down as follows. With
19 respect to any depositions that are relevant and binding
20 to a Monell claim, those witnesses would have to be
21 designed by the City of New York as people who can bind
22 them for purposes of a Monell claim.

23 THE COURT: Why is that?

24 MR. MODAFFERI: I'm sorry?

25 THE COURT: Why do they have to be binding.

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1 MR. MODAFFERI: because, you know, you can
2 depose a random City employees and what he or she says
3 regarding an incident has no bearing upon a policymaker's
4 decision to set forth a policy. They're just people who
5 are doing their job. So nothing that a low-level City
6 employee can never bind the City of New York.

7 THE COURT: But if these are --

8 MR. MODAFFERI: Well, that's what I am getting
9 to, your Honor.

10 THE COURT: Okay.

11 MR. MODAFFERI: So that's separate and apart
12 from fact witnesses.

13 THE COURT: Okay.

14 MR. MODAFFERI: Fact witnesses would be
15 witnesses who are noticed or subpoenaed under Rule 30 and
16 at this point, would require leave of court and good
17 cause because we've or plaintiff has surpassed the number
18 of depositions allotted under the Rules.

19 THE COURT: Which is ten, right?

20 MR. MODAFFERI: Which is ten.

21 THE COURT: All right. Mr. Hiles, you can sit.
22 You don't have to stand.

23 MR. HILES: Sorry.

24 MR. MODAFFERI: Oh, sorry.

25 THE COURT: No, whatever you're comfortable

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1 with but Mr. Hiles was not speaking, so I just wanted to
2 let him know that he doesn't have to stand when he's not
3 speaking.

4 MR. MODAFFERI: So now getting to the witnesses
5 that were mentioned, the ADA --

6 THE COURT: Hold on a second. There are
7 allotted ten witnesses --

8 MR. MODAFFERI: Right.

9 THE COURT: -- right, for Monell and the
10 twelve --

11 MR. MODAFFERI: No, no, no.

12 THE COURT: No?

13 MR. MODAFFERI: They're allotted ten fact
14 witnesses period, not just for Monell, for the case in
15 total, pursuant to Rule 38.

16 With respect to the --

17 THE COURT: But with the bifurcated -- you
18 can't have fact witnesses during the Monell stage of
19 discovery?

20 MR. MODAFFERI: Oh, sure you can.

21 THE COURT: Okay.

22 MR. MODAFFERI: Just again, provided that you
23 have some left over in the ten, unless leave of court and
24 good cause is shown.

25 THE COURT: Okay.

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1 MR. MODAFFERI: So that's -- I'm getting to
2 that point now.

3 With respect to the appeals to ADAs, really
4 they're can't be good cause shown because everything that
5 these ADAs said regarding the Brady material was said to
6 Judge Blumenfeld and Judge Blumenfeld held that it was
7 not Brady and agreed with everything that they had said.

8 So essentially by allowing these depositions to
9 go forward, we are relitigating an issue that was already
10 decided previously and this was mentioned in my papers as
11 having collateral estoppel effect.

12 THE COURT: Yeah, can you explain that a little
13 bit more? The -- at the 440, Judge Blumenfeld heard
14 evidence from these individuals, is that --

15 MR. MODAFFERI: Yes.

16 THE COURT: Okay. And you're saying that he
17 made a ruling that what they refer to was not Brady?

18 MR. MODAFFERI: Correct. And I cited it in my
19 papers with a case citation.

20 THE COURT: And specifically, the payments made
21 to Ms. Sanchez. Is that -- what was designated as not
22 Brady?

23 MR. MODAFFERI: Well, both the payments that
24 were made to Ms. Sanchez --

25 THE COURT: Uh-huh.

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1 MR. MODAFFERI: -- which were disclosed, so
2 clearly it was Brady but it was satisfied, the obligation
3 to turn over that material.

4 THE COURT: Okay.

5 MR. MODAFFERI: With respect to any additional
6 payments for the allegation of Section 8 housing that was
7 promised --

8 THE COURT: Right.

9 MR. MODAFFERI: That specifically was held not
10 to be Brady because at the time -- and if I can get the
11 quote specific -- it was known to both the jury and
12 plaintiff's counsel that -- pardon me, your Honor. The
13 jury was told that "Ms. Sanchez had been relocated and it
14 was not known to anyone at the time of trial that she
15 would eventually obtain Section 9 housing. This was not
16 a Brady violation and knowledge of it would have still
17 left the trial jury with the unanswered question of why
18 she called the police that day and why the defendant said
19 what he did."

20 THE COURT: Are you reading from Judge
21 Blumenfeld's decision?

22 MR. MODAFFERI: Correct.

23 THE COURT: Okay.

24 MR. MODAFFERI: And it's the Bellamy decision
25 from 2008 at *21 through 23.

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1 THE COURT: Uh-huh.

2 MR. MODAFFERI: So that's really what our
3 argument is with respect to the -- some of the additional
4 fact witnesses. With respect to the executives, which
5 stems from Mr. Castellano, all the way through the
6 district attorney, those would be your typical (30)(b)(6)
7 witness or a Monell witness because they really have no
8 involvement in Bellamy because they really have no
9 involvement in Bellamy.

10 For example, Mr. Hiles said that Mr.
11 Castellano's name was on some of the appeals papers.
12 That's tantamount to saying that Zachary Carter's name is
13 on my letter. There's no involvement there.

14 So really what we're trying to do and we're
15 trying to play by the rules is set forth one witness who
16 can bind the City with respect to each of the plaintiff's
17 Monell claims. It appears based on a review of
18 everything and as set forth in my letters, that the chief
19 assistant would be the relevant person with respect to
20 any claim for failure to discipline and the individual
21 with knowledge of the witness protection program is Mike
22 Mansky (ph.) and he was already deposed and questioned
23 with respect to the policies of the witness protection
24 program in this case, not only at the 440 but in a civil
25 deposition.

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1 So again, our papers speak for themselves.
2 this is, you know, sort of we're going through the
3 gauntlet of every person who could possibly be deposed at
4 the Queens DA's office and really, the new rules limit
5 the amount of discovery based on the proportionality of
6 the case.

7 So, you know, I did have a conversation with
8 Mr. Hoffman about trying to limit some of these people.
9 It's just at the end of the day, it was just so expansive
10 that we couldn't reach an agreement.

11 THE COURT: Okay, so when you said the chief
12 assistant, do you mean John Ryan?

13 MR. MODAFFERI: Correct.

14 THE COURT: Okay. All right. So, Mr. Hoffman
15 is it possible to combine some of these witnesses and
16 designate the ones that are the more important ones
17 rather than going through everyone? So for example, it
18 wasn't clear with Mr. Castellano if his name appears just
19 -- you know, if he really didn't have much to do with the
20 case --

21 MR. HOFFMAN: Just --

22 THE COURT: -- is he really necessary?

23 MR. HOFFMAN: Mr. Castellano is very necessary.
24 Your Honor, Mr. Castellano was chief of the appeals
25 bureau. He received the notifications from the appellate

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1 division that misconduct had occurred. We've listed 65
2 of vindications by the appellate division both in
3 remands, reversals or criticism where they say the
4 misconduct was egregious, flagrant.

5 He received notification of the reversals and
6 prepared memos to the chief and to DA Brown in the last
7 1990s regarding those reversals and a description of the
8 misconduct of the individual district attorney.

9 He has indicated in Sui, he doesn't know of one
10 instance of where one of these prosecutors, not one, was
11 disciplined or reprimanded.

12 He also, as Mr. Hiles said, fielded telephone
13 calls from the appellate division which was not developed
14 in Sui whether the appellate division made calls and said
15 some of this conduct is egregious and unacceptable. What
16 happened when he received those calls?

17 Each of those witnesses, your Honor, before we
18 take the (30) (b) (6) witness, will tell us how the
19 practice and policy of shielding Brady, which is what we
20 are talking about, shielding the constitutional
21 obligation of Brady to a defendant, how was it
22 practically implicated?

23 And Mr. Modafferi's reference to this Section 8
24 Judge Blumenfeld decision, shows how that policy
25 continued with Judge Blumenfeld, if I may, your Honor,

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1 tell you a little bit about how that came about.

2 To begin, we did not know exactly what Ms.
3 Sanchez received. We knew she --

4 THE COURT: We who? When?

5 MR. HOFFMAN: Ms. Sanchez, during the 440.

6 THE COURT: Okay.

7 MR. HOFFMAN: At the 440, or when we filed the
8 FOIL, we did not know the extent of the benefits or the
9 promises that she received. So we were asking what did
10 she receive on Section 8? What did she receive on other
11 housing benefits? What did she receive regarding cash?

12 As you know, your Honor, criminal law,
13 discovery is very, very restricted. We were not allowed
14 to look at the WPP file. Your Honor what happened is Ms.
15 Bratt and Ms. Piplotti went in to Judge Blumenfeld and
16 had an in camera discussion. And they told Judge
17 Blumenfeld, regarding Section 8, your Honor, that
18 happened a year after the trial. That could not be
19 Brady. That was true. And Judge Blumenfeld concluded
20 that it was not Brady because they said it happened much
21 later.

22 What Ms. Bratt and Ms. Piplotti did not tell
23 the judge are, one, that on November 28th, 1995, three
24 days before Ms. Sanchez testified, she was promised that
25 she would receive fr an indefinite period of time an

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1 apartment which she would not have to --

2 THE COURT: Okay. Mr. Hoffman --

3 MR. HOFFMAN: You know all of this.

4 THE COURT: I know all this. So I think --

5 MR. HOFFMAN: You know all of this.

6 THE COURT: -- your point is just that there
7 was information that came to light after Judge Blumenfeld
8 made his ruling that this was not Brady.

9 MR. HOFFMAN: But he did not --

10 THE COURT: Okay. So that's fine.

11 MR. HOFFMAN: It continued to be
12 (indiscernible).

13 THE COURT: Yes.

14 MR. HOFFMAN: But it --

15 MR. HILES: Can I just (indiscernible) briefly

16 --

17 MR. HOFFMAN: Do you mind?

18 MR. HILES: -- on a couple of things. I'm
19 sorry.

20 THE COURT: Yes.

21 MR. HILES: So yes, that's important and that
22 wasn't -- we just don't have testimony with that, we also
23 have documentary evidence. So it's in the file as we've
24 written. You know, with the Sui case, nine ADAs
25 testified before scheduled deposition of John Ryan which

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1 did not occur because the case was settled a week
2 beforehand.

3 So I mean, this is standard practice. I think
4 also, we need people who are on the ground for two
5 reasons; one, because we're going to have to show
6 proximate cause that it was the policies that caused the
7 violations. I mean that's essential.

8 Second, because there was no written policy for
9 discipline or the witness protection program. And so
10 they say that certain things happened but we need to talk
11 to the people on the ground to see if they actually did.
12 We suspect they did not and with the witness protection
13 program in particular, at first the defense was that we
14 separated those living expenses and other benefits
15 provided from the prosecutor's file, so the witness
16 wouldn't think there was a quid pro quo. Admitting that
17 there was this so-called Chinese wall.

18 Now the position is that it's on a case-by-case
19 basis that Mr. Mansfield (ph.), who of course doesn't
20 actually know what's going on in the specific cases,
21 makes disclosures about what's given to the -- decides
22 what's given to the prosecutor. So I mean all of these
23 people are absolutely essentially.

24 THE COURT: All right.

25 MR. HOFFMAN: I mean, if I may very quickly, I

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1 know it's not right to have two against one, this
2 argument regarding that our Monell individual depositions
3 could have been taken earlier, I would just attribute
4 that to Mr. Modafferri not being aware of the earlier
5 procedures in this case.

6 I was not allowed to ask questions to Mr.
7 Mansfield regarding the Monell. That was the agreement
8 that we had. I was not allowed to call Monell fact
9 witnesses, whether individual or policy maker. That was
10 a motion that was made by the City and precluded us after
11 it was bifurcated from taking those depositions.

12 Your Honor, if I may just quickly say, these
13 are widespread very important policies that we must be
14 able to look at. It has far reaching effect, not only
15 Mr. Bellamy but on a lot of other defendants who have
16 been subjected to this policy and practice.

17 There is a limit of ten and we've asked -- I
18 think we're now at twelve but there's a still burden upon
19 the City to show why us exceeding the number by two. It
20 is their burden to really show that what we're asking for
21 is not necessary or not relevant.

22 Each of those witnesses, your Honor, if I may,
23 we've looked at it carefully. We didn't ask for
24 everybody. There's a lot more administrators in Queens.
25 We asked for those who had information regarding this

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1 practice and policy. Thank you, your Honor.

2 THE COURT: All right. Thank you, Mr. Hoffman.

3 So did you want to say anything -- I'll just
4 give you an opportunity very briefly to say something
5 that you haven't said already.

6 MR. MODAFFERI: Your Honor, it's really -- you
7 know, the point is here, you know, we're willing to
8 provide the documents to counsel. I've believe we've
9 provided maybe close to 60,000 pages of documents
10 relevant to anywhere from training to personnel files, to
11 -- you know, the case Betty is one case that's semi-
12 related to this because there, you did have a threatened
13 witness who was promised living expenses but the
14 difference between Bellamy and that case is when the
15 threatened witness took the stand, the witness lied about
16 the expenses that were given to him and the prosecutor
17 never corrected it and that's why there was a finding
18 against the DA's office.

19 In Bellamy, the prosecutor affirmatively
20 elicited evidence of payments that were made and payments
21 that were promised at that time and there wasn't any
22 Brady violation with respect to that.

23 So here we're trying to, you know, provide them
24 with as much documentation as possible and provide the
25 relevant witnesses but here, you know, this is discovery

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1 that's tantamount to a case where plaintiff pled guilty
2 to a crime and then wants, you know extensive discovery
3 for false arrest when you know at summary judgment
4 they're not going to get anywhere.

5 So again, going through the list, John Ryan
6 would be the individual who can handle all questions
7 relating to policies, practices and procedures with
8 respect to disciplining ADAs. That should cut out
9 Castellano, Saunders, Masters and the DA himself.

10 With respect to the witness protection program,
11 I think it's undisputed that Mike Mansfield is the
12 witness. If counsel wants an unfettered right to
13 question him about the policies and practices where there
14 was an agreement before, that's fine. I'll reproduce
15 him.

16 But going through the first six witnesses on
17 the list, the only witness who I can see as possibly
18 being factually related to this case would be Brad
19 Leventhal because he's the ADA who handled the 440
20 motion.

21 Some of these, you know, ancillary ADAs who
22 made an appearance or handled the FOIL request, that's
23 just getting a little ridiculous. And just with respect
24 to the argument that was made where ADAs were deposed in
25 Sui prior to the scheduled deposition of John Ryan, the

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1 ADAs who were involved in Bellamy were deposed. There
2 was an ADA who was present for the lineups and handled
3 the grand jury. That's ADA Antignoni (ph.). He's
4 currently a judge. He was deposed.

5 For trial purposes, the ADA was David Guy.
6 David Guy was produced and deposed. So --

7 THE COURT: But they weren't -- that was --
8 because there's bifurcated discovery, the Monell claims
9 were not the subject of those depositions, correct?

10 MR. MODAFFERI: Well, that's not true because
11 the underlying basis for counsel's Monell claim with
12 respect to failing to discipline ADAs was that there was
13 summation misconduct that took place and failing to
14 discipline ADAs brought about this culture where in
15 summation, ADAs could say what they want. Counsel asked
16 the prosecutor about his summation from beginning to end.

17 THE COURT: Uh-huh.

18 MR. MODAFFERI: So with respect to the facts
19 underlying the Monell claim, yes, there was ample
20 discovery with respect to that.

21 Now we're at the point where we're producing
22 discovery with respect to the policies and procedures
23 themselves and that's why we're dealing with (30) (b) (6)
24 witnesses and witnesses who are the high-ups who --

25 THE COURT: Yes, I --

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1 MR. MODAFFERI: -- have set forth those
2 policies.

3 THE COURT: Right, my understanding of how
4 (30) (b) (6) works is that if there's a request for the
5 policies, then the defendant in this case has the
6 opportunity to designate the people who are in the best
7 position to do that.

8 MR. MODAFFERI: That's correct.

9 THE COURT: This is not a (30) (b) (6). This is
10 actually asking for specific witnesses and you're trying
11 to convert it into a (30) (b) (6) and so that's where I
12 think there's a disagreement.

13 I don't think the City gets to say, no, no, no,
14 we don't think these are the right witnesses. We're
15 going to give you alternative witnesses, so --

16 MR. MODAFFERI: Your Honor, if I may, the only
17 reason why we're saying that we're talking about them as
18 being (30) (b) (6) witnesses is because the list of
19 witnesses were provided to us as witnesses for the Monell
20 claim.

21 THE COURT: Correct.

22 MR. MODAFFERI: And the witnesses who could
23 bind the city for purposes of a Monell claim, would only
24 be (30) (b) (6) witnesses. That's where we are right now.
25 I am not trying to limit, you know, for example, I agree,

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1 Brad Leventhal may have factual information relevant to
2 the claims underlying this case --

3 THE COURT: Uh-huh.

4 MR. MODAFFERI: -- having nothing to do with
5 the Monell claim.

6 THE COURT: Right. So let me hear from
7 plaintiff very, very briefly on the question -- sorry --
8 on the question of in a Monell --in a bifurcated
9 discovery situation where we have now, like we have now
10 we're now just talking about Monell, can you have fact
11 witnesses or is what the City saying true that you can
12 only have (30) (b) (6) witness who can bind the City?

13 MR. HOFFMAN: No, there's no such precedent and
14 the statute itself says we don't have to go by
15 (30) (b) (6). We could take the witnesses who we know are
16 the policymakers.

17 THE COURT: Okay.

18 MR. HOFFMAN: We know who the policymaker in
19 this case is.

20 THE COURT: Right.

21 MR. HOFFMAN: Generally, (30) (b) (6) is done
22 when you have a (30) (b) (6) is done when you have a big
23 corporation and you don't know who has made the final
24 decision.

25 THE COURT: Right. That's --

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1 MR. HOFFMAN: We know who has made the final --

2 THE COURT: And I think also the allegations
3 are it's the practice and things --

4 MR. HOFFMAN: And --

5 THE COURT: There may have been a policy. The
6 policy may not have been good and then there may have
7 been a policy that was fine but in practice, it wasn't
8 implemented properly, so --

9 MR. HOFFMAN: Right. How it was implemented is
10 why the --

11 THE COURT: Yeah.

12 MR. HOFFMAN: -- the other would --

13 THE COURT: Yes. And I think up till this
14 point, just the complicated procedures in this case where
15 information is coming out piecemeal, and for example with
16 the FOIL officer, the fact that the representation was
17 searched. There is no such document and then later a
18 document shows up. I think that that speaks to what the
19 policy was in terms of disclosing information and this
20 internal wall, how it was set up and how that as
21 implemented.

22 So I am going to allow those witnesses to go
23 forward but I think that there is one -- the list that
24 was attached to filing 125, so 125-1, had thirteen people
25 listed. You've withdrawn Judge Blumenfeld, so that

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1 leaves it at twelve but also with regard to Robert
2 Masters, it says that plaintiffs are deferring taking his
3 deposition at this time.

4 MR. HOFFMAN: We understood that he had a
5 personal family tragedy --

6 THE COURT: All right.

7 MR. HOFFMAN: -- and we thought that we
8 shouldn't be taking that time.

9 THE COURT: All right. So --

10 MR. HOFFMAN: But as we do these depositions,
11 we may not take Mr. Masters --

12 THE COURT: Right.

13 MR. HOFFMAN: -- under the circumstances.

14 THE COURT: All right. So that, if you take
15 him off the list, that's eleven. So what I am going to
16 do is to limit you to ten.

17 MR. HOFFMAN: All right.

18 THE COURT: All right. And let you decide
19 which person you're going to drop.

20 MR. HOFFMAN: All right.

21 THE COURT: But I would also that you start
22 with the witnesses that the City has offered -- Manfeld -
23 - Manfield and Ryan, I believe. Start with them. Yes?

24 MR. HOFFMAN: I would rather not.

25 MR. HILES: I'm sorry.

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1 THE COURT: Why not?

2 MR. HILES: I'm very sorry. So one of the
3 reasons is that these fact witnesses are witnesses that
4 we can depose right away. There's been a lot of delay in
5 this case. I know it's not Mr. Modaffer's fault but --
6 and now we're going to need to get a lot more documents
7 which I'm sure we'll discuss next.

8 And so, I mean, we're talking about summertime
9 depositions for these people, not only could we use those
10 depositions more effectively, if we talked to the other
11 people first but also, these are depositions between we
12 can get going with right away. And that's been very
13 important to us to hurry this along.

14 THE COURT: Well, how will you -- I mean, if
15 you're saying that you can -- it's possible that you'll
16 winnow that list of ten down even further, I would say
17 you should start with the people who have the most
18 knowledge that would enable you to winnow the list down,
19 as opposed to starting with the minor ones first, just
20 because they're easier to schedule.

21 MR. HILES: I think that there's two kinds of
22 knowledge. There's the underlying factual knowledge
23 which we know who has that and we know that the people at
24 the top don't. Then there's the policy knowledge and I
25 think that that does make sense for the policy issue and

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1 that we could do that with regards to the policy issue
2 but it's really two separate tracts and it would be
3 several months of delay in addition to less effective and
4 efficient policy witness depositions, your Honor.

5 MR. HOFFMAN: If I may say, as a practical
6 matter, okay, we asked Ms. Bratt, you know, at the in
7 camera review, did you show -- you know, Mr. Modafferi
8 says there's no Brady but there's a December 7th, before
9 the trial was ended, \$2,800 payment requisition. So we
10 asked Ms. Bratt, why didn't you look at it? What -- how
11 -- why -- why weren't you permitted to look at it?

12 And then we could go to Mr. Ryan and say look,
13 Ms. Bratt says this and that. Was that the policy? Was
14 that the practice? So it seems that us being able to
15 establish how the practice worked and was implemented and
16 then go to the policymaker, to us anyway makes more
17 sense. You know, to start at the lower level to see what
18 it was. So that's our position on that.

19 THE COURT: All right.

20 MR. MODAFFERI: Your Honor?

21 THE COURT: Yes, Mr. Modafferi?

22 MR. MODAFFERI: Sorry, just to further
23 complicate matters, I would just ask is your Honor going
24 to put this in an order on ECF or actually issue a formal
25 written --

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1 THE COURT: I wasn't intending on writing
2 anything extensive.

3 MR. MODAFFERI: Okay. No, that's fine.

4 THE COURT: Uh-huh.

5 MR. MODAFFERI: It's very likely that after
6 speaking to my clients or my office, that there might be
7 a motion made under Rule 72. So I just want to make sure
8 that there's something -- an order somewhere and that may
9 further delay things if that's the course that my client
10 wishes to take.

11 THE COURT: All right. So I mean, I will issue
12 something. I would issue something that just states what
13 my conclusion is --

14 MR. MODAFFERI: That's fine.

15 THE COURT: -- and a very brief justification
16 for it. I wasn't intending on writing something that had
17 a lot of legal precedent and --

18 MR. MODAFFERI: That's fine.

19 THE COURT: -- because I understand people want
20 to keep moving. So I hope there won't be delay on my
21 part. All right.

22 So I will allow plaintiffs to take those
23 depositions in the order that you want but with two
24 caveats, one is keep in mind that it would be best if you
25 could drop additional witnesses as they become

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1 unnecessary as you proceed and the other is that be
2 mindful of the time of people who are indisputedly busy.
3 So when you embark on their depositions, especially of
4 the higher-up people, please be very targeted in the
5 areas that you're looking to ask questions of.

6 And then also as a courtesy, you could speak
7 with Mr. Modafferi in advance about the areas you want to
8 get into, so that he can prepare his witness and not, you
9 know, have the witness be surprised. This exercise is
10 not one of ambush. So in advance, you should just let
11 him know what you're seeking to explore, the areas, the
12 documents, all that stuff.

13 MR. HOFFMAN: We'll give him the cases that
14 we're going to be questioning on.

15 THE COURT: Yes. All right. So then that will
16 be respectful of the witness' time.

17 MR. MODAFFERI: Your Honor, I would also
18 request that to the extent that any of these witnesses
19 are being proffered as (30) (b) (6) witnesses now, I --
20 quite frankly, because the procedure wasn't plaintiff
21 provide a list of areas of topics and then the City
22 designate a witness to cover all of them, at this point,
23 we don't know who would be the (30) (b) (6) witness or are
24 all of these fact witness.

25 THE COURT: Right.

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1 MR. MODAFFERI: If they're all fact witnesses,
2 you know, they come into the deposition with their
3 factual knowledge and that's it. So you'll probably get
4 a lot of "I don't knows."

5 So that would be crucial to, you know,
6 producing any witness prior to a deposition because at
7 this point, you know, we wouldn't know who is speaking on
8 behalf of the DA's Office and who is speaking on behalf
9 of their personal knowledge.

10 THE COURT: Yes, that's a fair point and
11 especially if you're asking, for example, District
12 Attorney Brown about cases he will not know without prior
13 preparation. So --

14 MR. HOFFMAN: We will do that.

15 THE COURT: Yeah.

16 MR. HOFFMAN: We will do that. We will -- we
17 won't surprise anybody. We'll advise what cases we want
18 an explanation as to what happened or what did not
19 happen.

20 THE COURT: And if you are asking the City to
21 produce witnesses who are biding the City, as far as the
22 policy, then you do need to make the 30(b)(6) request.

23 MR. HOFFMAN: We will do that. Yes, your
24 Honor.

25 THE COURT: Okay. All right. So I know

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1 there's still some document discovery issues. We're
2 running late and I don't want to keep other parties
3 waiting. Are there things that can be --

4 MR. HOFFMAN: I think it's -- well --

5 THE COURT: Give me an overview of what you
6 would need for me to decide today.

7 MR. HOFFMAN: Uhm.

8 THE COURT: I mean it's just a lot of stuff.

9 MR. HOFFMAN: It is a lot of stuff.

10 THE COURT: So --

11 MR. HOFFMAN: I will --

12 THE COURT: -- I just don't know what's the
13 best use of your time --

14 MR. HOFFMAN: Certain --

15 THE COURT: -- and my time. We can go through
16 each category of dispute. We can go through, you know,
17 general categories.

18 MR. HOFFMAN: Oh.

19 THE COURT: I can send the parties back to
20 continue working together. I'm just not sure how to
21 handle --

22 MR. HOFFMAN: We are willing to continue to
23 work together. I guess one of the rulings you could make
24 is allowing us to file a motion to compel which we could
25 do in a couple of days. We have had extensive

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1 discussions. It will be approximately twelve pages.
2 There are a lot of interrogatories and document requests.
3 During that time, we could keep talking. I'll
4 say it is --

5 MR. HILES: And just one quick thing is that
6 when we meet and talk to the City, I mean, your Honor
7 will have to rule on the motion to compel because the
8 City's basically said it's given us all it's going to
9 give us but when we mean talk to the City, that would be
10 sort of after a decision and saying, all right, so if
11 we're allowed to get these documents, how can we do that
12 in a way that's like least cumbersome, those --

13 THE COURT: Okay.

14 MR. HILES: -- that sort of thing.

15 THE COURT: Okay. So you've reached an impasse
16 in terms of what the City's willing to turn over and you
17 want to file a motion to compel. Okay. And I read the
18 recent filings which were not -- which were termed
19 "status reports" as opposed to a motion to compel. So
20 that's why it didn't feel like there was something for me
21 to decide.

22 So I will grant you the opportunity to file a
23 motion to compel. I'll let you have a page limit of
24 twelve.

25 MR. HOFFMAN: Right.

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1 THE COURT: And the City can respond also with
2 twelve pages and then I'll take a look at the specific
3 requests and try to make rulings on them, just by reading
4 your pleadings, but if not, then I'll allow -- I'll ask
5 for an oral argument on those points. Okay?

6 So as far as the motion to -- there's also this
7 motion to strike and I'm denying it, okay? So just to
8 clear that off. In general, in order to file a reply,
9 there does need to be permission from the Court. In this
10 case, the City did not seek prior permission but I don't
11 -- I am not going to make a big deal out of that. All
12 right. So I've read the pleadings. I'll consider them.
13 But in the future, I just don't want back and forth, back
14 and forth, because that could go on forever. So if you
15 want to file a reply, just ask permission.

16 MR. MODAFFERI: I apologize, your Honor. It
17 was really just, you know, my initial motion for a
18 protective order was --

19 THE COURT: Yes.

20 MR. MODAFFERI: -- semi-limited.

21 THE COURT: I understand.

22 MR. MODAFFERI: And then the response was, I
23 believe like sixteen pages.

24 THE COURT: Yes, and that's the same thing.
25 Also, with the page limits, just ask in advance. I know

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1 this is a case that's been hotly contested. I know
2 people want to have their say and I also feel the parties
3 are repeating a lot. And it may be because I am new to
4 the case and you want to make sure I get your salient
5 points, but I've now familiarized myself with the case
6 and so I just need to know the specific point that you
7 want me to look at and you don't need to go back into all
8 the facts of the case. Okay?

9 Again, it's a very hotly contested case. Have
10 the parties engaged in any kind of attempts to settle or
11 there's just no way? It just seems like there's a lot of
12 work still to be done and this might be an opportunity,
13 since we're now moving to the Monell phase for the
14 parties to think about whether settlement is possible.

15 MR. MODAFFERI: Your Honor, I am not sure if
16 there were any talks with my predecessor.

17 THE COURT: Uh-huh.

18 MR. MODAFFERI: But I do know and this kind of
19 goes back to the conversation that we had with your Honor
20 when I was first assigned to the case and appeared before
21 your Honor, my knowledge is that it's been a case that's
22 been flagged for trial purposes.

23 THE COURT: Uh-huh.

24 MR. MODAFFERI: But again, I'm not quite sure
25 if there were settlement talks and counsel could probably

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1 bring me up to speed if there were or there were not but,
2 you know, it doesn't hurt to keep lines of communication
3 open.

4 THE COURT: Okay. So I would encourage the
5 parties at this point just to take a step back, look at
6 whether resolution is possible and let me know if you
7 need help in that regard. All right?

8 So I will memorialize my oral ruling in writing
9 and let's set another status -- oh, I need to give you a
10 deadline for the motion to compel. You said, Mr.
11 Hoffman, how much time? You said two weeks, you could
12 have it done?

13 MR. HOFFMAN: Oh, no we can have our motion in
14 two days.

15 THE COURT: Two days. Okay. So I will give
16 you until February 19.

17 MR. HOFFMAN: Right.

18 THE COURT: And then the City, is a week enough
19 time or do you need more time to respond?

20 MR. MODAFFERI: Your Honor, if I can
21 respectfully have a little more time.

22 THE COURT: All right.

23 MR. MODAFFERI: I'm starting a trial in the
24 southern district on Monday.

25 THE COURT: Oh, okay.

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1 MR. MODAFFERI: So that --

2 THE COURT: Name your deadline.

3 MR. MODAFFERI: March -- I mean, it's most
4 likely material that we've discussed and put in our
5 letters. So March 4th would be ample time.

6 THE COURT: All right. Great. March 4th then.
7 And let's go ahead and have another date.

8 MR. HOFFMAN: Of course we would like the next
9 conference as early as possible.

10 THE COURT: Yes.

11 MR. HOFFMAN: That's subject to the convenience
12 of the Court, of course, and Mr. Modafferri.

13 THE COURT: All right. I will schedule it, so
14 that if I need oral argument on the motion to compel, we
15 can do that. So the week of March 15th is really full.
16 Sorry. I could do -- on March 14th in the afternoon,
17 like around 3 o'clock.

18 MR. HOFFMAN: Yes.

19 THE COURT: Is that possible?

20 MR. MODAFFERI: That works.

21 THE COURT: Okay. So let's do that. March
22 14th, 3 o'clock. We'll do a status conference and like I
23 said, if I need oral argument on the motion to compel,
24 we'll do it then. Otherwise, I hope to have made a
25 ruling and then we can just move on.

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1 (Pause)

2 THE COURT: Okay. So is that it?

3 MR. MODAFFERI: I believe it is, your Honor.

4 THE COURT: All right. Thank you very much.

5 MR. MODAFFERI: Thank you.

6 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 8th day of March, 2016.



Linda Ferrara

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